

by the railroad with the shipper, if made.

PART 1039—EXEMPTIONS

Sec.

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AUTHORITY: 49 U.S.C. 10502, 13301.

SOURCE: 47 FR 50262, Nov. 5, 1982, unless otherwise noted.

§ 1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.

The rail transportation of the commodities listed below is exempt from the provisions of subtitle IV of title 49, except that carriers must continue to comply with Board accounting and reporting requirements, including a brief statement in their annual reports of operations under this exemption, and must maintain copies of rates, charges, rules or regulations, for traffic moved under this exemption, at their principal office, subject to inspection, and send a letter of notification to the docket [Ex Parte No. 346 (Sub-No. 14)], within 30 days, of the fact that they are using the exemption. All tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply except to the extent adopted by carrier quotations. The categories of commodities which are exempt under this decision, by Standard Transportation Commodity Code (STCC) number are:

01	Farm products, with the exception of grain (STCC No. 0113), soybeans (STCC No. 01144), and sunflower seeds (STCC No. 0114940).
09	Fresh fish and other marine products.

20–11	Fresh meat.
20–15	Fresh dressed poultry.
20–17	Processed poultry.
20–21	Creamery Butter.
20–23	Condensed, Evaporated or Dried Milk.
20–25	Cheese and Special Dairy Products.
20–26	Processed Whole Milk.
20–141	Hides and Skins.
20–144	Animal refuse, tankage, or meat meal.
20–421–27	Citrus pomace.
20–712–12	Shelled walnuts.
20–914–25	Cottonseed hulls.
20–915	Cotton linters.
20–999–29	Butter and honey mixed.
20–999–41	Honey, comb, granulated or strained, or heat treated to retard granulation.
20–999–76	Freeze-dried poultry.
20–999–77	Freeze-dried meat.
20–999–78	Freeze-dried salad ingredients.
20–999–93	Fresh and salted meat and products mixed, not hung.
20–999–94	Fresh and salted meat and products mixed, hung and not hung.
21–4	Stemmed or redried tobacco.
22–811–30	Cotton, carded, dyed or not dyed, but not spun, woven or knitted, but including cotton lap.
22–911–63	Mattress felt, nec, ciors, not finished.
22–911–74	Felts, cotton, nec.
22–971–35	Wool, nec, scoured.
22–995–22	Flax fibre.
22–999–26	Cotton linters, bleached or dyed.
28–423–37	Beeswax.

and shall embrace all articles assigned additional digits. The STCC shall be those code numbers in effect as of January 1, 1979, as shown in Standard Transportation Commodity Code Tariff 1–G, STB STCC 6001–C. Nothing in this exemption shall be construed to affect our jurisdiction under section 10502 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 9277, Mar. 4, 1983; 49 FR 22095, May 25, 1984, as amended at 49 FR 26745, June 29, 1984; 49 FR 27321, July 3, 1984; 64 FR 53267, Oct. 1, 1999; 69 FR 58365, Sept. 30, 2004]

§ 1039.11 Miscellaneous commodities exemptions.

(a) *Commodities exempted.* Except as indicated in paragraph (b) of this section, the rail transportation of the commodities listed below is exempt from the provisions of 49 U.S.C. subtitle IV. The Standard Transportation Commodity Code (STCC) numbers that identify the exempted commodities are those in effect on the effective date of the tariff cited, and shall embrace all commodities assigned additional digits.

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STCC No.	STCC tariff	Commodity
14 1	6001-T, eff. 1-1-92	Dimension stone, quarry.
14 2do	Crushed or broken stone or riprap.
14 411 .....	.....do	Sand (aggregate or ballast).
14 412 .....	.....do	Gravel (aggregate or ballast).
20 .....	.....do	Food or kindred products except
		20 143 Grease or inedible tallow.
		20 32 Canned specialties.
		20 33 Canned fruits, jams, jellies, preserves or vegetables.
		20 4 Grain mill products.
		20 6 Sugar, beet or cane.
		20 8 Beverages or flavoring extracts.
		20 911 Cottonseed oil, crude or refined.
		20 914 Cottonseed cake or meal or by-products.
		20 92 Soybean oil or by-products.
		20 93 Nut or vegetable oils or by-products.
22 .....	.....do	Textile mill products.
23 .....	.....do	Apparel or other finished textile products or knit apparel.
24 .....	.....do	Lumber or wood products.
25 .....	.....do	Furniture or fixtures.
26 .....	.....do	Pulp, paper or allied products except
		26 1 Pulp or pulp mill products.
		26 211 Newsprint.
		26 212 Ground wood paper, uncoated.
		26 213 Printing paper, coated or uncoated, etc.
		26 214 Wrapping paper, wrappers or coarse paper.
		26 218 Sanitary tissue stock.
		26 471 Sanitary tissues or health products.
		26 6 Building paper or building board except
		26 613 Wallboard.
27 .....	.....do	Printed matter.
28 195 22-23 .....	.....do	Iron chloride, liquid.
28 195 27-30 .....	.....do	Iron sulphate.
28 195 68-69 .....	.....do	Ferrous sulphate.
29 914 .....	.....do	Coke produced from coal.
29 915 .....	.....do	Distillate or residual fuel oil from coal refining.
30 .....	.....do	Rubber or miscellaneous plastics products except
		30 111 Rubber pneumatic tires or parts.
31 .....	.....do	Leather or leather products.
32 .....	.....do	Clay, concrete, glass or stone products except
		32 411 Hydraulic cement, natural, portland or masonry.
		32 741 Lime or lime plaster.
		32 95 Nonmetallic earths or minerals, ground or treated in any other manner except
		32 952 15 Cinders, clay, shale expanded shale), slate or volcanic (not pumice stone),
		or haydrite.
33 .....	.....do	Primary metal products, including galvanized.
34 .....	.....do	Fabricated metal products except
		34 6 Metal stampings.
		34 919 40 Radioactive material shipping containers, etc.
35 .....	.....do	Machinery except
		35 11 Steam engines, turbines, turbine generator sets, or parts.
		35 85 Refrigerators or refrigeration machinery or complete air-conditioning units.
36 .....	.....do	Electrical machinery, equipment or supplies except
		36 12 Power, distribution or specialty transformers.
		36 21 Motors or generators.
37 11 .....	.....do	Motor vehicles.
37 14 .....	.....do	Motor vehicle parts or accessories.
38 .....	.....do	Instruments, photographic goods, optical goods, watches or clocks.
39 .....	.....do	Miscellaneous products of manufacturing.
41 118	6001-U, eff. 1-1-93	Used vehicles.
14 715	6001-V, eff. 1-1-94	Rock salt.
20 143 .....	.....do	Grease or inedible tallow.
28 133 .....	.....do	Carbon dioxide.
28 991 .....	.....do	Salt.
32-4 .....	.....do	Hydraulic cement.
34 912	6001-W, eff. 1-1-95.	Steel shipping containers.
40 211 .....	.....do	Iron and steel scrap.
33 119	6001-X, eff. 1-1-96	Blast furnace, open hearth, rolling mill or coke oven products, NEC.
20511	6001-X, eff., 1-1-96	Bread or other bakery products exc. biscuits, crackers, pretzels or other dry bakery
		products. See 20521-20529.
22941 .....	.....do	Textile waste, garnetted, processed, or recovered or recovered fibres or flock exc.
		packing or wiping cloths or rags. See 22994.
22973 .....	.....do	Textile fibres, laps, noils, nubs, roving, sliver or slubs, prepared for spinning, combed or
		converted.
22994 .....	.....do	Packing or wiping cloths or rags (processed textile wastes).

STCC No.	STCC tariff	Commodity
24293 .....	.....do.	Shavings or sawdust.
30311 .....	.....do.	Reclaimed rubber.
3229924 .....	.....do.	Cullet (broken glass).
33312 .....	.....do.	Copper matte, speiss, flue dust, or residues, etc.
33322 .....	.....do.	Lead matte, speiss, flue dust, dross, slag, skimmings, etc.
33332 .....	.....do.	Zinc dross, residues, ashes, etc.
33342 .....	.....do.	Aluminum residues, etc.
33398 .....	.....do.	Misc. nonferrous metal residues, including solder babbitt or type metal residues.
40112 .....	.....do.	Ashes.
40212 .....	.....do.	Brass, bronze, copper or alloy scrap, tailings, or wastes.
40213 .....	.....do.	Lead, zinc, or alloy scrap, tailings or wastes.
40214 .....	.....do.	Aluminum or alloy scrap, tailings or wastes.
4021960 .....	.....do.	Tin scrap, consisting of scraps or pieces of metallic tin, clippings, drippings, shavings, turnings, or old worn-out block tin pipe having value for remelting purposes only.
40221 .....	.....do.	Textile waste, scrap or sweepings.
40231 .....	.....do.	Wood scrap or waste.
40241 .....	.....do.	Paper waste or scrap.
40251 .....	.....do.	Chemical or petroleum waste, including spent.
40261 .....	.....do.	Rubber or plastic scrap or waste.
4029114 .....	.....do.	Municipal garbage waste, solid, digested and ground, other than sewage waste or fertilizer.
4029176 .....	.....do.	Automobile shredder residue.
4111434 .....	.....do.	Bags, old, burlap, gunny, istle (ixtle), jute, or sisal, NEC.
41115 .....	.....do.	Articles, used, returned for repair or reconditioning.
42111 .....	.....do.	Nonrevenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC, empty, returning in reverse of route used in loaded movement, and so certified.
42112 .....	.....do.	Nonrevenue movement of shipping devices, consisting of blocking, bolsters, cradles, pallets, racks, skids, etc., empty, returning in reverse of route used in loaded movement, and so certified.
42311 .....	.....do.	Revenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC, empty, returning in reverse of route used in loaded movement and so certified.

Excluded from this exemption are any movements for which a finding of market dominance has been made. However, this exemption shall not be construed as affecting in any way the existing regulations, agreements, prescriptions, conditions, allowances or levels of compensation regarding the use of equipment, whether shipper or railroad owned or leased, including car hire, per diem and mileage allowances, and also including exemption from the anti-trust laws necessary to negotiate car service regulations or mandatory interchange of equipment or to maintain and execute such agreements. Nor shall this exemption be construed to affect existing Class III railroad “protections” in the case of boxcars.

(b) *Conditions.* Carriers must continue to comply with Board accounting and reporting requirements. All railroad tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 24901, June 3, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1039.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1039.12 Long and short haul transportation exemption.

(a) All rates and charges for rail transportation are exempt from the provisions of 49 U.S.C. 10726 to the extent that:

(1) Board approval or consideration before the effective date of these rates and charges is not required; and

(2) Section 10707 will not apply to rates to the extent that they are challenged on the basis of alleged violations of section 10726.

(b) This exemption does not extend to review by the Board upon the filing of a formal complaint alleging a violation of section 10726. Board review will, however, be subject to the following conditions:

(1) A showing that a rate violates section 10726 will not create a presumption that the higher rate is unreasonably high, and

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(2) A finding by the Board that a rate or charge violates the provisions of section 10726 will not, absent a specific showing of damages, afford a basis for an award of reparations.

[48 FR 9649, Mar. 8, 1983]

§ 1039.13 Rail intermodal transportation exemption.

See Part 1090.

[52 FR 23660, June 24, 1987]

§ 1039.14 Boxcar transportation exemptions and rules.

(a) The Rail transportation of all commodities in boxcars is exempt from the provisions of 49 U.S.C. subtitle IV except as otherwise provided in this section.

(b) The Board retains jurisdiction in the following areas:

(1) Car hire and car service.

(2) Mandatory interchange of equipment.

(3) Reciprocal switching or joint use of terminal facilities.

(4) Car supply.

(5) Freight car pooling agreements.

(6) Freight rates applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier, to the extent provided in paragraphs (c)(4) and (c)(5) of this section.

(c)(1) Except as provided in paragraph (c)(2) of this section, carriers are authorized to take the following actions with respect to boxcar equipment use:

(i) Assess charges for empty movement of cars where movements are made at the request of the car owner, the Association of American Railroads, or the Board. The empty mileage charge is subject to a maximum of 35 cents per mile, as adjusted for inflation or deflation using the rail cost adjustment factors published periodically by the Board in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*. In applying those factors, the figure of 35 cents will be treated as having been in effect on October 1, 1982.

(ii) Store empty cars and reclaim car hire payments beginning at the expiration of a 72-hour grace period after the car is made empty.

(iii) Negotiate bilateral agreements governing car hire rates, empty movements, and storage.

(2) The authorization in paragraphs (c)(1) (i) and (ii) of this section will not apply to excluded carriers, as defined in paragraph (c)(2)(i) of this section, nor will it apply to any boxcar which, on December 30, 1983, was owned or leased by a carrier which then would have qualified as an excluded carrier and which bears the reporting marks of an excluded carrier.

(i) An "excluded carrier" is a Class III carrier or a Class II carrier not affiliated with one or more Class I carriers. To be affiliated, the Class II carrier must be more than 50 percent owned by one or more Class I carriers.

(ii) The boxcar exclusion of paragraph (c)(2) of this section will apply:

(A) To an excluded boxcar whenever it is owned or leased by any Class III carrier and bears a Class III carrier's reporting marks; and

(B) To an excluded boxcar owned or leased by an excluded Class II carrier beginning on October 16, 1986, and ending on October 31, 1990, so long as such boxcar has not been otherwise owned or leased by another carrier during this period.

(iii) The exclusion will not apply during any period in which an excluded boxcar is leased or assigned to a Class I or affiliated Class II carrier. If an excluded Class II carrier becomes a Class III carrier within the period under § 1039.14(c)(2)(ii)(B), that carrier will thereafter, for purposes of this rule, be treated as if it had been a Class III carrier on December 10, 1983.

(iv) Nothing in paragraph (c)(2) of this section will affect the right of any carrier to negotiate bilateral agreements governing car hire rates and rules.

(3) The hourly and mileage car hire rates in effect on January 1, 1985, as published in AAR Traffic Circular No. OT-10, for any boxcar excluded under paragraph (c)(2) of this section, will remain in effect without regard to the aging of such car subsequent to January 1, 1986, and any modification to the existing car hire formula will not apply to such cars. With respect to an excluded boxcar owned or leased by an excluded Class II carrier, those car hire

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rates shall remain in effect through October 31, 1990. Any improvements subsequent to January 1, 1985, to the excluded boxcars capitalized under OT-37 criteria or under rebuilt criteria will be subject to the same formula applicable to OT-37 or rebuilt cars under Ex Parte No. 334 or any other railroad car hire proceeding, including any efficiency ratio, if adopted. Any improvements or repairs subsequent to December 31, 1990, to the excluded boxcars performed under OT-37 criteria or under rebuilt criteria or any other criteria shall not result in any increases, additions, or surcharges in the car hire rates for such cars.

(4) No freight rate made effective after April 1, 1985, that applies to traffic moving by boxcar and originating or terminating at an industry facility served physically by a Class III rail carrier may discriminate while these rules are in effect on the basis of:

(i) The ownership of the boxcar used or the reporting marks any such boxcar bears;

(ii) The car hire rate applicable to the boxcar used; or

(iii) Any car hire discounts, in the form of reclaims or otherwise, available to any carriers with respect to the boxcar used.

Except as prohibited above, carriers may use car ownership or car marks for identification purposes when establishing rates.

(5) The provisions of 49 U.S.C. 10705 and 10705a applicable to joint rates and through routes will be effective as to rates and routes applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier.

(6) The following carriers are not regarded as Class III or unaffiliated Class II carriers for the purpose of this section:

Central New York Railroad Corporation
Cooperstown and Charlotte Valley Railway Corporation
Fonda, Johnstown & Gloversville Railroad Corporation
Lackawaxen and Stourbridge Railroad Corporation
New York, Susquehanna & Western Railway Corporation
Rahway Valley Railroad Company
Staten Island Railway Corporation.

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(d) Carriers must continue to comply with Board accounting and reporting requirements. Railroad tariffs pertaining to the exempted transportation of commodities in boxcars will no longer apply. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 20415, May 6, 1983, as amended at 50 FR 20419, May 16, 1985; 51 FR 32656, Sept. 15, 1986; 51 FR 32922, Sept. 17, 1986; 52 FR 37971, Oct. 13, 1987; 55 FR 41339, Oct. 11, 1990; 57 FR 53451, Nov. 10, 1992; 57 FR 56641, Nov. 30, 1992; 61 FR 26847, May 29, 1996]

§ 1039.16 Exemption of new highway trailers or containers.

The rail transportation of new highway trailers or containers (which is not otherwise exempt) is exempt from the provisions of 49 U.S.C. Subtitle IV, except that carriers must continue to comply with the Board's accounting and reporting requirements. This exemption will remain in effect unless modified or revoked by subsequent order of this Board.

[52 FR 17404, May 8, 1987]

§ 1039.17 Protective service contracts exemption.

Contracts for protective services against heat or cold, provided to or on behalf of rail carriers and express companies, are exempt from the requirements of 49 U.S.C. 11105. Nothing in this exemption shall be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[49 FR 19025, May 4, 1984]

§ 1039.20 Storage leases.

Storage leases for all equipment for all carriers are exempt from the provisions of 49 U.S.C. subtitle IV except for 49 U.S.C. 11123. Nothing in this exemption should be construed to affect our jurisdiction under section 10502 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This

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exemption shall remain in effect, unless modified or revoked by a subsequent decision of this Board.

[51 FR 46675, Dec. 24, 1986, as amended at 69 FR 58365, Sept. 30, 2004]

§ 1039.21 International joint through rates.

Rail carriers are exempt from the provisions of §1312.37 that require the filing of tariffs containing international joint through rates. Rail carriers must continue to comply with Board accounting and reporting requirements. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[51 FR 27046, July 29, 1986]

§ 1039.22 Exemption of certain payments, services, and commitments from the Elkins Act and related provisions.

(a) Whenever a rail carrier:

(1) Provides payments or services for industrial development activities; or,

(2) Makes commitments regarding future transportation;

and reasonably determines that such payments, services or commitments would not be eligible for inclusion in rail contracts under 49 U.S.C. 10713, such transaction(s) shall be exempt from 49 U.S.C. 10761(a), 10762(a)(1), 11902, 11903, and 11904(a), subject to the conditions set forth in paragraphs (b) through (e) of this section.

(b) If any interested person(s) believes a transaction is eligible for inclusion in one or more contracts under 49 U.S.C. 10713, that person's exclusive remedy shall be to request the Board to so determine, and if the Board does so, the transaction shall no longer be exempted by this section commencing 60 days after the date of the Board's determination.

(c) Transactions that are exempt under paragraph (a) of this section shall be subject to all other applicable provisions of Title 49 U.S.C. Subtitle IV and to the antitrust laws to the extent that the activity does not fall within the Board's exclusive jurisdiction.

(d) For any actual movement of traffic, a carrier must file any required tariff or section 10713 contract, and

conform to all other applicable provisions of the Interstate Commerce Act, but this paragraph shall not be interpreted to limit, revoke, or remove the effect of the exemption granted under paragraph (a) of this section with respect to any payments, services, or commitments made prior to the filing of the rate or contract.

(e) When any person files with the Board a petition to revoke the exemption granted by this section as to any specific transaction, the rail carrier shall have the burden of showing that, with respect to such transaction, all requirements of paragraph (a) of this section were met, and the carrier reasonably expected, before undertaking such payments, services or commitments, that such payments, services or commitments would result, within a reasonable time, in a contribution to the carrier's going concern value.

(f) This exemption shall remain in effect unless modified or revoked by a subsequent order of this Board.

[57 FR 11913, Apr. 8, 1992]

PARTS 1070-1079 [RESERVED]

Parts 1090-1099—Intermodal Transportation

PART 1090—PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

Sec.

1090.1 Definition of TOFC/COFC service.

1090.2 Exemption of rail and highway TOFC/COFC service.

1090.3 Use of TOFC/COFC service by motor and water carriers.

AUTHORITY: 49 U.S.C. 721.

§ 1090.1 Definition of TOFC/COFC service.

(a) Rail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service means the transportation by rail, in interstate or foreign commerce, of—

(1) Any freight-laden highway truck, trailer, or semitrailer,

(2) The freight-laden container portion of any highway truck, trailer, or semitrailer having a demountable chassis,